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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/618,118	07/11/2003	Pierluigi Pugliese	Pugliese 31	4099
47384	7590	10/16/2007	EXAMINER	
RYAN, MASON & LEWIS, LLP			HICKS, MICHAEL J	
90 FOREST AVENUE				
LOCUST VALLEY, NY 11560				
		ART UNIT	PAPER NUMBER	
		2165		
		MAIL DATE	DELIVERY MODE	
		10/16/2007	PAPER	

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	Application No.	Applicant(s)	
	10/618,118	PUGLIESE, PIERLUIGI	
	Examiner	Art Unit	
	Michael J. Hicks	2165	

*-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --*

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

1) Responsive to communication(s) filed on 06 August 2007.

2a) This action is FINAL.                    2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

4) Claim(s) 22-41 is/are pending in the application.

4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5) Claim(s) \_\_\_\_\_ is/are allowed.

6) Claim(s) 22-24,26-28,34-36 and 38-40 is/are rejected.

7) Claim(s) 25,29-33,37 and 41 is/are objected to.

8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on 7/11/2003 is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All    b) Some \* c) None of:

1. Certified copies of the priority documents have been received.

2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.

3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s)/Mail Date: _____
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	
3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date: _____	5) <input type="checkbox"/> Notice of Informal Patent Application 6) <input type="checkbox"/> Other: _____

**DETAILED ACTION**

1. Claims 22-41 Pending.

Claims 1-21 Canceled.

***Continued Examination Under 37 CFR 1.114***

2. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 8/6/2007 has been entered.

***Response to Arguments***

3. Applicant's arguments, see RCE, filed 8/6/2007, with respect to the rejection(s) of claim(s) 22-42 under USC 102 have been fully considered and are persuasive. Therefore, the rejection has been withdrawn. However, upon further consideration, a new ground(s) of rejection is made in view of Shaffer et al. (US Patent Number 5,821,936 and referred to hereinafter as Schaffer).

***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

Art Unit: 2165

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 22-24, 26-28, 34-36, and 38-40 rejected under 35 U.S.C. 102(b) as being anticipated by Schaffer.

As per Claims 22, 34, and 38, Schaffer discloses a processor-implemented method, device, and machine readable storage medium for rearranging a plurality of menu items within a menu structure of a user interface, the method comprising the steps of collecting data about respective selection rates of the menu items within a current menu structure (i.e. *"In one embodiment, the resequencing occurs adaptively and is based upon monitoring selections of the menu items over time. The menu items are typically options in which some options are selected and others remain unselected. Each selection of each option is counted. A resequencing of the menu items is determined by the frequency of selection. Thus, the menu options are adaptively rearranged in a frequency-based order, with the most often selected option being presented first in the next utilization of the user interface."*) The preceding text excerpt clearly indicate that data is collected about the frequency of menu selection (e.g. a tracking of the number of times each menu item is selected) prior to adapting the menu structure (e.g. this data would have to be collected in order to determine the frequency of menu items, which is needed to perform the frequency re-ordering from a default configuration, such as shown in Figures 3-5.) (Column 2, Lines 5-16); calculating a new menu structure based on the collected data about the respective selection rates of the menu items within the current menu structure (i.e. *"In one embodiment, the resequencing occurs adaptively and is based upon monitoring selections of the menu items over time. The menu items are typically options in which some options are selected and others remain unselected. Each selection of each option is counted. A resequencing of the menu items is determined by the frequency of selection."*).

*Thus, the menu options are adaptively rearranged in a frequency-based order, with the most often selected option being presented first in the next utilization of the user interface.* "The preceding text excerpt clearly indicate that data is collected about the frequency of menu selection (e.g. a tracking of the number of times each menu item is selected) prior to adapting the menu structure (e.g. this data would have to be collected in order to determine the frequency of menu items, which is needed to perform the frequency re-ordering from a default configuration, such as shown in Figures 3-5.) (Column 2, Lines 5-16); and replacing the current menu structure with the new menu structure (i.e. "*In one embodiment, the resequencing occurs adaptively and is based upon monitoring selections of the menu items over time. The menu items are typically options in which some options are selected and others remain unselected. Each selection of each option is counted. A resequencing of the menu items is determined by the frequency of selection. Thus, the menu options are adaptively rearranged in a frequency-based order, with the most often selected option being presented first in the next utilization of the user interface.*" The preceding text excerpt clearly indicate that data is collected about the frequency of menu selection (e.g. a tracking of the number of times each menu item is selected) prior to adapting the menu structure (e.g. this data would have to be collected in order to determine the frequency of menu items, which is needed to perform the frequency re-ordering from a default configuration, such as shown in Figures 3-5.) (Column 2, Lines 5-16); wherein user approval of menu alteration is obtained via the user interface prior to completion of the replacing step (i.e. "*As another optional feature, the resequencing may be disabled to turn "off" the statistical collection that counts the item selections. In utilizing this feature, the user may invoke a resequence option that initiates rearrangement of the menu items based upon the "learning" that occurred since the adaptation option was last enabled. Allowing adaptation to be enabled and disabled is beneficial for those instances in which a user is performing operations that are exceptions to the norm or are single-time activities. As a related optional feature, the statistical collection may remain "on," but with the resequencing occurring only upon the command of the user. This prevents unexpected and/or unwanted resequencing from causing difficulties for the user.*" The preceding text excerpt clearly indicates that the system may be configured such that the

user must initiate the resequencing procedure using a command, thereby approving the menu alteration and utilizing the user interface. Note that this step may take place before the replacing, collecting, and calculating steps.) (Column 2, Lines 25-37).

As per Claims 23, 35, and 39, Schaffer discloses the user approval is obtained prior to completion of the collecting step (i.e. *"As another optional feature, the resequencing may be disabled to turn "off" the statistical collection that counts the item selections. In utilizing this feature, the user may invoke a resequence option that initiates rearrangement of the menu items based upon the "learning" that occurred since the adaptation option was last enabled. Allowing adaptation to be enabled and disabled is beneficial for those instances in which a user is performing operations that are exceptions to the norm or are single-time activities. As a related optional feature, the statistical collection may remain "on," but with the resequencing occurring only upon the command of the user. This prevents unexpected and/or unwanted resequencing from causing difficulties for the user."*) The preceding text excerpt clearly indicates that the system may be configured such that the user must initiate the resequencing procedure using a command, thereby approving the menu alteration. Note that this step may take place before the replacing, collecting, and calculating steps.) (Column 2, Lines 25-37).

As per Claims 24, 36, and 40, Schaffer discloses the user approval is obtained prior to completion of the calculating step (i.e. *"As another optional feature, the resequencing may be disabled to turn "off" the statistical collection that counts the item selections. In utilizing this feature, the user may invoke a resequence option that initiates rearrangement of the menu items based upon the "learning" that occurred since the adaptation option was last enabled. Allowing adaptation to be enabled and disabled is beneficial for those instances in which a user is performing operations that are exceptions to the norm or are single-time activities. As a related optional feature, the statistical collection may remain "on," but with the resequencing occurring only upon the command of the user. This prevents*

*unexpected and/or unwanted resequencing from causing difficulties for the user.*" The preceding text excerpt clearly indicates that the system may be configured such that the user must initiate the resequencing procedure using a command, thereby approving the menu alteration. Note that this step may take place before the replacing, collecting, and calculating steps.) (Column 2, Lines 25-37).

As per Claim 26, Schaffer discloses the user approval comprises the selection of a specified menu item (i.e. "As another optional feature, the resequencing may be disabled to turn "off" the statistical collection that counts the item selections. In utilizing this feature, the user may invoke a resequence option that initiates rearrangement of the menu items based upon the "learning" that occurred since the adaptation option was last enabled. Allowing adaptation to be enabled and disabled is beneficial for those instances in which a user is performing operations that are exceptions to the norm or are single-time activities. As a related optional feature, the statistical collection may remain "on," but with the resequencing occurring only upon the command of the user. This prevents unexpected and/or unwanted resequencing from causing difficulties for the user." The preceding text excerpt clearly indicates that the resequencing takes place in response to a command, which is linked to an option on a menu.) (Column 2, Lines 25-37).

As per Claim 27, Schaffer discloses the menu items are arranged within a plurality of functional groupings within the current menu structure (i.e. "Second-level menu items are preferably also tracked for frequency of selection. That is, if selection of a particular option in the main menu initiates display of submenu items related to the initial selection, there preferably is a monitoring of the user selection of the submenu items, so that an adaptive frequency-based reordering also occurs at the submenu level." The preceding text excerpt clearly indicates that menus may include submenus (e.g. functional groupings of commands within the menu structure).) (Column 2, Lines 38-44) and wherein the new menu structure comprises rearrangement of particular ones of the

menu items within at least a given one of the functional groupings while maintaining said plurality of functional groupings of the menu items (i.e. "Second-level menu items are preferably also tracked for frequency of selection. That is, if selection of a particular option in the main menu initiates display of submenu items related to the initial selection, there preferably is a monitoring of the user selection of the submenu items, so that an adaptive frequency-based reordering also occurs at the submenu level." The preceding text excerpt clearly indicates that the submenus (e.g. functional groupings) may be resequenced regarding frequency, while maintaining their structure.) (Column 2, Lines 38-44).

As per Claim 28, Schaffer discloses the functional groupings comprise submenus displayed responsive to the selection of at least one menu item (i.e. "Second-level menu items are preferably also tracked for frequency of selection. That is, if selection of a particular option in the main menu initiates display of submenu items related to the initial selection, there preferably is a monitoring of the user selection of the submenu items, so that an adaptive frequency-based reordering also occurs at the submenu level." The preceding text excerpt clearly indicates that menus may include submenus (e.g. functional groupings of commands within the menu structure) which are displayed responsive to the selection of a primary menu item.) (Column 2, Lines 38-44)

### ***Allowable Subject Matter***

3. Claims 25, 29-33, 37, and 41 objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

The following is a statement of reasons for the indication of allowable subject matter:

As per Claims 25, 37, and 41, the prior art of record neither discloses nor suggests the limitation of displaying the new menu structure to the user prior to the completion of the replacing step wherein the user approval comprises user approval of the new menu structure as displayed.

As per Claim 29 the prior art neither teaches nor suggest the limitation of calculating a difference between the new menu structure and the current menu structure.

All other indicated claims depend from Claim 29.

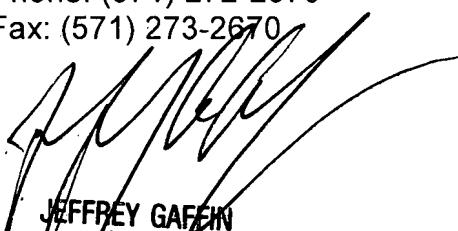
***Points of Contact***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael J. Hicks whose telephone number is (571) 272-2670. The examiner can normally be reached on Monday - Friday 10:00a - 7:00p.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jeffrey Gaffin can be reached on (571) 272-4146. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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